distinction between altering an existing tariff and enjoining the establishment of a proposed new tariff, allowing an injunction in the latter case until the final determination of the reasonableness of the rates by the Commission.[16] It is true such action does not involve any alteration of an existing tariff, but the result is in effect the same, and involves a judicial determination of the reasonableness of a rate without any investigation by the Commission, whereas the evident purpose of the legislation by Congress was to give complete jurisdiction to the Commission. Following this line of reasoning, the latest case on this question rejected the distinction made in all previous decisions and refused to temporarily enjoin the enforcement of a proposed new schedule pending investigation by the Commission. *Atlantic Coast Line Ry. Co.* v. *Macon Grocery Co.*, 166 Fed. 206 (C. C. A., Fifth Circ., Jan. 5, 1909). The Supreme Court has expressly left open the question of enjoining rates, established or otherwise,[17] but it is submitted that, consistently with its present attitude,[18] it should refuse to allow any action by the courts prior to the investigation provided for in the Interstate Commerce Act. The remedy should lie at the instigation of the Commission which conducts the investigation.[19]

THE LIABILITY OF PRINCIPALS FOR FRAUDULENT OVER-ISSUES BY THEIR AGENTS. — The liability of principals for tortious issues of bills of lading and certificates of stock by their agents has been rested on various grounds. Jurisdictions not only differ on the main principles, but differ as well in applying them to the various forms of these "quasi-negotiable" instruments. Under the broad principle of *respondeat superior* principals are held liable for torts committed by their agents within the scope of their employment.[1] In defining this scope, however, the courts separate. The English courts hold that it is not within the scope of an authority to issue such instruments fraudulently, nor to over-issue them, thus confining the principal's liability to cases where he might receive some benefit.[2] Lord Robertson, however, in a recent case, stated that he found it "extremely difficult on principle to hold that the scope of the agent's employment can be limited to the right performance of his duties, or to say that an agent within whose province it is truly to record a fact is outside the scope of his duties when he falsely records it."[3] The difficulty suggested seems insuperable. If it is possible to say that the principal did not authorize fraud, it would seem equally possible to say that he did not authorize other torts, including negligence.

Another ground for imposing liability is found in estoppel. The principal, having held out his agent as having authority, cannot later deny the authority. But the orthodox doctrine is that the extent of the authority is

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[16] M. C. Kiser Co. *v.* Central of Georgia Ry. Co., 158 Fed. 193; Northern Pac. Ry. Co. *v.* Pacific Coast Lumber Mfrs. Association, 165 Fed. 1.

[17] See Southern Ry. *v.* Tift, *supra.*

[18] Texas & Pacific Ry. Co. *v.* Abiline Cotton Oil Co., *supra.*

[19] The Commission has petitioned Congress for such power. 21st Annual Report of the Interstate Commerce Commission, p. 10.

[1] Ry. Co. *v.* Bank, 56 Oh. St. 351; Schuyler *v.* R. R., 34 N. Y. 30, 49.

[2] Whitechurch *v.* Cavanaugh, [1902] A. C. 117; Ruben *v.* Fingal Co., [1906] A. C. 439.

[3] Whitechurch *v.* Cavanaugh, *supra.*

to be measured by the original delegation to the agent of the right to do certain things: that these things were to be done in a certain way does not prevent the existence of the authority to do the thing, and if the agent chooses a wrong way, the principal should none the less be responsible.[4] Such reasoning seems preferable to the alternative reasoning that a principal is liable to an outsider only where the facts lie peculiarly within the knowledge of the agent and are not easily ascertainable by the outsider.[5]

In many cases of fraudulent over-issues, however, an independent tort liability is imposed on the principal as arising from his own negligence.[6] There would seem to be such negligence where blank stock certificates are signed by one of the two necessary parties; for such previous signing is generally unnecessary to the prompt transfer of the certificates. But it is hard to find negligence in the mere giving of blank bills of lading to the master of a vessel, as otherwise it would be impossible for him to transact business.

Except as to this liability for negligence, it is difficult to agree with the many courts which make distinctions with varying results between bills of lading and certificates of stock. The agent acts within the scope of his employment in both cases alike; so that the principle of *respondeat superior* should equally apply. In both cases the facts are peculiarly within the knowledge of the agent and ascertainable with difficulty by a defrauded purchaser of the instrument. Each document is a continuing representation by the principal. Neither is strictly a negotiable instrument, yet both have become so by custom; and both alike are symbols of property; and the fact that the principal derives no benefit from negotiability should not prevent acknowledgment that there is now this general custom.[7] A recent New York case refuses to apply the there recognized liability of principals on both bills of lading and stock certificates to certificates of indebtedness in the form of stock certificates issued by a cemetery corporation. *American, etc., Bank* v. *Woodlawn Cemetery*, 87 N. E. 107 (Ct., App.). The reasoning of the court that the reasons that make stock certificates negotiable do not apply to certificates of indebtedness is difficult to adopt; for in both the corporation would seem benefited by their negotiability. A further ground of dissent might be found in the unfairness resulting from allowing a denial that certificates in what appeared to be a negotiable form were not so in fact.

THE RESPONSIBILITY IN AMERICA FOR THE KEEPING OF ANIMALS. — The American cases on this subject, following the common law, have divided animals into two classes, *ferae naturae* and *mansuetae naturae* — a classification injected into the law of torts for the purpose of determining the liability of the owner or keeper of animals for their vicious acts. The decisions abound with the general statements that the owner or custodian of an animal *ferae naturae* is liable for any injury done by it to a third person

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[4] Willis *v.* Fry, 36 Leg. Int. (Pa.) 47; W. Md. R. R. *v.* Franklin Bank, 60 Md. 36.

[5] Allen *v.* R. R. Co., 150 Mass. 200.

[6] Allen *v.* R. R. Co., *supra*; Titus *v.* Turnpike Rd., 61 N. Y. 237, 242; Havens *v.* Bank, 132 N. C. 214; Moores *v.* Bank, 111 U. S. 156. Manhattan Life Ins. Co. *v.* 42d. etc., R. R., 46 N. Y. St. 130, *contra*, on the point that the purchaser was put on notice. See 18 HARV. L. REV. 144.

[7] See 19 HARV. L. REV. 391.